

MARK J. BENNETT 2672  
Attorney General of Hawaii

HERBERT B.K. LAU 2591  
Deputy Attorney General  
Department of Attorney  
General, State of Hawaii  
Labor Division  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: 586-1450

Attorneys for Director of Labor  
and Industrial Relations

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HAWAII LABOR  
RELATIONS BOARD

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,  
DEPARTMENT OF LABOR AND  
INDUSTRIAL RELATIONS,

Complainant,

vs.

HILTON HAWAIIAN VILLAGE, LLC,

Respondent.

) CASE NO. OSH 2009-14  
) (Inspection No. 311436042)  
)  
) STIPULATION AND SETTLEMENT  
) AGREEMENT; EXHIBIT A; APPROVAL  
) AND ORDER

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director of Labor and Industrial Relations ("Director") and  
Respondent HILTON HAWAIIAN VILLAGE, LLC ("Respondent") having reached a full and  
complete settlement of the above-captioned contested case presently pending before the Hawaii  
Labor Relations Board ("Board") stipulate and agree as follows:

On or about December 7, 2008, the Director, by and through the State of Hawaii's  
Occupational Safety and Health Division ("HIOSH"), initiated an inspection of the Respondent's  
workplace located at 2005 Kalia Road, Honolulu, Hawaii, 96815.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on April 17, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$7,500.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 2005 Kalia Road, Honolulu, Hawaii, 96815.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than thirty (30) after the filing of the instant Agreement; failure to timely do so may result in additional penalties or follow up inspections.
5. The Citation is amended as follows:
  - a. Citation 1, item 2, alleging a serious violation of 29 CFR 1910.212(a)(5) [chapter 12-80.1, HAR] is reduced to an "other" classification, and the associated \$1,875.00 penalty is deleted;
  - b. the \$1,875.00 penalty associated with Citation 1, item 3, alleging a

serious violation of 29 CFR 1910.304(g)(5) [chapter 12-89.1, HAR] is reduced to \$1,125.00; and

c. the \$1,875.00 penalty associated with Citation 1, item 4, alleging a serious violation of 29 CFR 1910.305(b)(2)(i) [chapter 12-89.1, HAR] is reduced to \$1,312.50;

6. The Director reduces the aggregate penalty from \$7,500.00 to \$4,312.50, which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. If Respondent fails to fulfill any condition of this Agreement within the time stated, the characterization of citation 1, item 2, that was reduced to "other" shall be automatically reinstated to "serious", and the original penalty amount shall automatically and without further notice be reinstated to \$7,500.00, and shall be final and conclusive and shall be treated as such with regard to any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter

396, the Hawaii Occupational Safety and Health Law, or the related rules.

12. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, 8/17/09.

HILTON HAWAIIAN VILLAGE, LLC

By: [Signature]  
Its Director of Safety & Security

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

[Signature]  
HERBERT B.K. LAU  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii

[Signature]  
DARWIN L.D. CHING  
Director of the Department of Labor  
and Industrial Relations

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 345

DATED: August 26, 2009

[Signature]  
JAMES B. NICHOLSON, Chair

[Signature]  
EMORY J. SPRINGER, Member

[Signature]  
SARAH R. HIRAKAMI, Member

## State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813  
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7005 1820 0003 3812 2112

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## Citation and Notification of Penalty

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**To:**

Hilton Hawaiian Village LLC  
and its successors  
2005 Kalia Rd  
Honolulu, HI 96815

Inspection Number: 311436042 (Stacy Greybar)  
Inspection Date(s): 12/07/2008- 12/29/2008  
Issuance Date: 04/17/2009  
OSHSO ID: A6586  
Optional Report No.: 0809  
Inspection Type: Complaint  
Scope of Inspection: Comprehensive Inspection

**Inspection Site:**

2005 Kalia Rd  
Honolulu, HI 96815

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

## ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

Hilton Hawaiian Village LLC  
2005 Kalia Rd  
Honolulu, HI 96815

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name





## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 04/17/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.



**Citation and Notification of Penalty**

Company Name: Hilton Hawaiian Village LLC  
Inspection Site: 2005 Kalia Rd, Honolulu, HI 96815

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**Citation 1 Item 1** Type of Violation: **Serious**

29 CFR 1910.134(e)(1) [Refer to chapter 12-64.1, HAR] was violated because:

Housekeeping employees required to use N95 dust masks were not provided a medical evaluation. Use of a respirator without a medical evaluation can cause aggravation of a pre-existing cardiac or pulmonary disorder.

29 CFR 1910.134(e)(1) states "The employer shall provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace. The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator."

Location: Establishment

Date By Which Violation Must be Abated:	04/27/2009
Penalty:	\$ 1,875.00

**Citation 1 Item 2** Type of Violation: **Serious**

29 CFR 1910.212(a)(5) [Refer to chapter 12-80.1, HAR] was violated because:

Two portable fans were found not properly guarded potentially exposing employees to portions of the fan blades. Exposure to fan blades when fans are being used could potentially expose employees to serious injuries.

29 CFR 1910.212(a)(5) states "Machine guarding. Exposure of blades. When the periphery of the blades of a fan is less than seven (7) feet above the floor or working level, the blades shall be guarded. The guard shall have openings no larger than one-half (1/2) inch."

Location: Maintenance Shop locker room

Date By Which Violation Must be Abated:	Corrected
Penalty:	\$ 1,875.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Hilton Hawaiian Village LLC  
Inspection Site: 2005 Kalia Rd, Honolulu, HI 96815

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#### Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.304(g)(5) [Refer to chapter 12-89.1, HAR] was violated because:

The grounding path to a Sanyo Refrigerator and a UL listed surge protector were found not to be permanent, continuous, and effective. Employees exposed to ungrounded equipment are potentially exposed to serious electrical hazards.

29 CFR 1910.304(g)(5) states "Grounding path. The path to ground from circuits, equipment, and enclosures shall be permanent, continuous, and effective."

Location: 1. Diamond Head Tower- Food and Beverage office  
2. Tapa Tower ground floor- Stewards office

Date By Which Violation Must be Abated:  
Penalty:

Corrected  
\$ 1,875.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

Inspection Number: 311436042

Inspection Dates: 12/07/2008-12/29/2008

Issuance Date: 04/17/2009



**Citation and Notification of Penalty**

Company Name: Hilton Hawaiian Village LLC  
Inspection Site: 2005 Kalia Rd, Honolulu, HI 96815

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**Citation 1 Item 4 Type of Violation: Serious**

29 CFR 1910.305(b)(2)(i) [Refer to chapter 12-89.1, HAR] was violated because:

Three duplex receptacles were found available for use with no faceplates to prevent accidental contact to exposed live parts. Employees exposed to live wire/parts of receptacles potentially exposes employees to serious electrical injuries.

29 CFR 1910.305(b)(2)(i) states "All pull boxes, junction boxes, and fittings shall be provided with covers identified for the purpose. If metal covers are used, they shall be grounded. In completed installations, each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear."

Location: 1. Village Tunnel Hallway  
2. Parking Garage Banquet office on the 2nd Floor  
3. Coral Ballroom- Control Lighting room

Date By Which Violation Must be Abated:  
Penalty:

Corrected  
\$ 1,875.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

Inspection Number: 311436042

Inspection Dates: 12/07/2008 - 12/29/2008

Issuance Date: 04/17/2009



**Citation and Notification of Penalty**

Company Name: Hilton Hawaiian Village LLC  
Inspection Site: 2005 Kalia Rd, Honolulu, HI 96815

**Citation 2 Item 1** Type of Violation: Other

29 CFR 1910.134(f)(2) [Refer to chapter 12-64.1, HAR] was violated because:

Housekeeping employees required to use N95 tight-fitting, air-purifying, half-mask dust masks were not provided fit tests and maintenance employees were not provided annual fit testing. The use of a respirator without a fit test potentially exposes the employees to the chemicals they are using due to the respirator not fitting properly which could cause inhalation irritation.

29 CFR 1910.134(f)(2) states "The employer shall ensure that an employee using a tight-fitting facepiece respirator is fit tested prior to initial use of the respirator, whenever a different respirator facepiece (size, style, model, or make) is used, and at least annually thereafter."

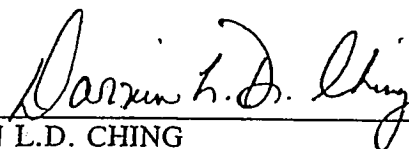
Location: Establishment

Date By Which Violation Must be Abated:

04/27/2009

Penalty:

\$ 0.00

  
\_\_\_\_\_  
DARWIN L.D. CHING  
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

**SUMMARY OF PENALTIES**

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**Company Name:** Hilton Hawaiian Village LLC  
**Inspection Site:** 2005 Kalia Rd, Honolulu, HI 96815  
**Issuance Date:** 04/17/2009

**Summary of Penalties for Inspection Number 311436042**

Citation 1, Serious	= \$	7,500.00
Citation 2, Other	= \$	0.00
<b>TOTAL PENALTIES</b>	<b>= \$</b>	<b>7,500.00</b>

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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.